

## **REMARKS**

### **Status of the Claims**

Upon entry of the amendment above, claims 1-4 and 6-35 will remain pending, claims 1, 8, 13, 19, 21, and 34 being independent.

### **Summary of the Office Action**

Claims 1-3, 6-8, 11-14, and 21 are rejected under 35 USC §102(b), as being anticipated by KOGERT et al. (U.S. Patent No. 3,570,149, hereinafter "KOGERT"). See Section 2, beginning on page 2 of the Office action.

Claims 4, 9, 10, 16-20, 24-26, 34, and 35 are rejected under 35 USC §103(a) as being unpatentable over KOGERT in view of LENTZ (FR 726 292). See Section 4 on page 3 of the Office action.

Claims 27-33 are rejected under 35 USC §103(a) as being unpatentable over KOGERT. See Section 5 on page 4 of the Office action.

Claims 15, 22, and 23 are rejected under 35 USC §103(a) as being unpatentable over KOGERT in view of BURT (U.S. Patent No. 6,401,364). See Section 6, beginning on page 4 of the Office action.

### **Response to the Office Action**

The "Response to Arguments" section of the Office action includes the following explanation for the Examiner having maintained the rejections, solely or primarily based upon KOGERT, despite the fact that *KOGERT coats the entirety of his shoe with a polymer* (as provided in column 1, line 17, lines 57-58, and in claim 1, lines 4-5):

Specifically stated in Kogert in column 2, lines 7-11, it states 'a plurality of layers of compact porous polyurethane can be applied, **where necessary ...**' (emphasis added). This shows that a layer of polyurethane can be applied to less than the entire upper. The rest of the upper would

therefore meet the requirement that less than the entire upper having this particular polymer coating as required in the independent claims. The only requirement in the independent claims is that 'thereby resulting in less than the entirety of the upper having a polymer coating.' Kogert thereby meets this limitation since less than the entire upper has this particular coating. If the applicant wants to argue that the instant application only has one coating, then applicant should claim as much saying that less than the entire upper has a single polymer coating.

Applicants' undersigned representative telephoned the Examiner and discussed the matter of KOGERT's relevance to the claimed invention. It was explained, in response to the suggestion of the Examiner, that Applicants do not desire to limit their claims to only one coating. However, during that discussion, for the purpose of clarification that Applicants do not intend to encompass the hypothetical of KOGERT's porous polyurethane layer constituting the coating of Applicants' claims, *i.e.*, being a coating that is applied to less than to the entirety of KOGERT's upper while nevertheless allowing the possibility of an undercoating that does coat the entirety of the upper, it was agreed that Applicants would specify in each of the independent claims, that less than the entirety of Applicants' upper has ***any*** coating at all. Thus, Applicants' independent claim 1 has been amended to state that "less than the entirety of the upper having *any* polymer coating." Similar amendments are made herein to the other independent claims.

Contrary to the express teachings of KOGERT, Applicants' claimed invention leaves at least a portion of the upper non-coated with liquid polymer. That is, a portion of the upper is devoid of the liquid polymer coating.

In addition, Applicants maintain that the claims, including various dependent claims, are separately allowable for reasons previously set forth.

In spite of the foregoing amendment, if the Examiner were to be of the opinion that an additional amendment were necessary to render the instant application in condition for allowance, including an Examiner's Amendment, he is kindly invited to contact Applicants' undersigned representative for such purpose.

### **SUMMARY AND CONCLUSION**

The grounds of rejection advanced in the Office action have been addressed and are believed to be overcome. Reconsideration and allowance are respectfully requested in view of the amendment and remarks above.

No fee is believed to be due at this time. However, the Commissioner is authorized to charge any fee required for acceptance of this reply as timely and/or complete to Deposit Account No. 19-0089.

Further, no extension of time is believed to be necessary at this time. However, if it were to be found that an extension of time were to be necessary to render this reply timely and/or complete, Applicants request an extension of time under 37 CFR §1.136(a) in the necessary increment(s) of month(s) that, in such event, would render this reply timely and/or complete, and the Commissioner is authorized to charge any necessary extension of time fee to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone or fax number given below.

Respectfully submitted,  
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